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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 MISTY McINTIRE,

8 Plaintiff,

9 v.

10 SHAWNA DOE and JOHN DOE, husband,  
and wife, and J.C. PENNEY CORPORATION,

11 Defendants.  
12

No. C08-0201RSL

ORDER REMANDING CASE

13 The above captioned matter was recently removed from state court. The Court *sua*  
14 *sponte* requested that defendant provide additional information regarding its assertion that  
15 “plaintiff will seek damages in excess of \$75,000.00, exclusive of interest and costs.” Notice of  
16 Removal at 2 (Dkt. # 1). In response, defendant states the following:

17 Plaintiff has alleged claims of assault, battery, false arrest, false imprisonment,  
18 negligent hiring and negligent supervision. Based on defendant’s and undersigned  
19 counsel’s experience, it is the defendant’s belief that the plaintiff intends to assert  
20 general and special damages in an amount in excess of \$75,000. In the event that  
21 the plaintiff intends to represent to this Court that the amount in controversy does  
22 not exceed \$75,000, and agrees to be estopped from seeking an amount in excess of  
\$75,000, defendant will accept this representation and consequent estoppel.

23 Defendant J.C. Penney Corporation, Inc.’s Submission of Information Regarding Removal from  
24 State Court at 2-3 (Dkt. # 8).

25 The removal statute, 28 U.S.C. § 1441, is construed restrictively: any doubts  
26 regarding the removability of a case will be resolved in favor of remanding the matter to state

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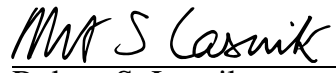
1 court. See, e.g., Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 108-09 (1941); Duncan v.  
2 Stuetzle, 76 F.3d 1480, 1485 (9th Cir. 1996). Defendant has the burden of proving by a  
3 preponderance of the evidence that removal is appropriate under the statute which, in this case,  
4 means that J.C. Penney must show that plaintiff seeks more than \$75,000 in damages. See, e.g.,  
5 Abrego Abrego v. Dow Chem. Co., 443 F.3d 676, 682-83 (9th Cir. 2006).<sup>1</sup>

6 In her complaint, plaintiff requests damages “in an amount that will fairly  
7 compensate plaintiff for all damages sustained” as a result of defendants’ false accusations of  
8 shoplifting. Plaintiff does not allege any physical injuries or other circumstances that would  
9 make a large damage award likely. Although she was angered and embarrassed by the  
10 accusations, search, and detention, the complaint on its face does not show that the amount in  
11 controversy exceeds \$75,000. Nor do the “facts” set forth in defendant’s response to the Court’s  
12 inquiry provide an adequate basis for the Court to find that the jurisdictional amount is satisfied:  
13 it is not clear how much experience defendant or its counsel have with false imprisonment  
14 verdicts and they make no attempt to identify the nature or extent of plaintiff’s injuries.  
15 Defendant’s response “neither overcomes the strong presumption against removal jurisdiction,  
16 nor satisfies [defendant’s] burden of setting forth, in the removal petition itself, the *underlying*  
17 *facts* supporting its assertion that the amount in controversy exceeds [\$75,000].” Gaus v. Miles,  
18 Inc., 980 F.2d 564, 567 (9th Cir. 1992) (emphasis in original) (internal quotation marks  
19 omitted).

20 There being no basis for the exercise of federal jurisdiction, this matter is hereby  
21 remanded to the Superior Court of Washington in and for the County of Skagit.

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24  
25 <sup>1</sup> It is not plaintiff’s burden to show that she is not seeking damages in excess of the jurisdictional  
26 amount. To the extent defendant removed this case in the hope of wringing a concession from plaintiff  
regarding the amount of her damages, such tactics would be improper.

Dated this 29th day of February, 2008.



Robert S. Lasnik  
United States District Judge